IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 24335 of 2004

Between:

M/s Anuradha Timber Estates 97/A, Road No.14, Jubilee Hills, Hyderabad rep. by its Partner, Mr.Ch.Tirupathi Rao.

..... PETITIONER

AND

1 The Assistant Commissioner of Income Tax Circle-6(1),

Buddha Bhavan, M.G.Road Secunderabad.
2 The Tax Recovery Officer-6 Income Tax Department, 6th

Floor, Budha Bhavan, M.G.Road, Secunderabad.
3 The Commissioner of Income Tax AP-3,

Basheerbagh,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High

Court will be pleased to issue a writ of Certiorari or any other appropriate writ or order or direction quashing the order of the Income Tax Appellate Tribunal dated 20.12.2004 passed in stay petition No.181/Hyd/2004 in ITA.NO.61/Hyd/2004, as unreasonable, harsh, onerous and unjustified and consequently restrain the Respondents from taking any coercive steps for collection of disputed Tax and interest levied for the assessment year 2000-01 pending disposal of the main appeal in ITA No.61/Hyd/2004 before the Income Tax Appellate Tribunal, Hyderabad Bench and pass such other order or orders.

Counsel for the Petitioner:Dr.N.R.SIVA SWAMY

Counsel for the Respondent Nos 1 to 3 .: MR.B.NARASIMHA SHARMA (SC FOR INCOME TAX)

The Court made the following :

O R D E R (Per MHSA,J)

Heard Dr. N.R.Sivaswamy learned counsel for the petitioner and Sri B.Narasimha Sharma, learned Standing Counsel for Income Tax.

2 . Keeping in view the nature of relief prayed for and also the submissions made at the bar, we are inclined to dispose of the

instant writ petition at the stage of admission, instead of keeping the same pending on the file of this Court.

3. It appears that the learned Tribunal vacated the stay granted by it earlier, in view of the statutory provisions contained in the second proviso to Section 254 (2A) of the Income Tax Act, 1961. We would not normally interfere with the discretionary order of the learned Tribunal, more so, when the stay petition filed by the petitioner has been allowed in part by granting installments and also listing the matter for hearing on 31.1.2005. However keeping in view that there was a conditional stay granted by the Tribunal vide its order dated 27.2.2004 and the said condition had been complied with by the petitioner – assessee and that the vacation of stay is for the reasons as noted supra, we modify the order of the learned Tribunal as under:

" Petitioner shall pay a sum of Rs.5,00,000/- (Rupees five lakhs only) on or before 31.12.2004 and the balance amount as stipulated in clause (a) of the order of the Tribunal under challenge, on or before 15.01.2005 and thereafter petitioner shall continue to pay the balance amount in installments of Rs.5,00,000/- (Rupees five lakhs only) on or before 15th day of each succeeding month, till the disposal of appeal before the learned Tribunal; or if the appeal is disposed of, then subject to orders that may be passed by the Tribunal in the said appeal, it shall be open for the respondent authorities to recover the arrears of tax due in accordance with law or to refund the tax in excess, if any, collected from the assessee, as the case may be."

4 . With the directions and observations as above, writ petition is accordingly disposed of without going into the merits of the main controversy. No costs.

5. All questions are accordingly left open with respect to the merits and it shall be open to the learned Tribunal to dispose of the appeal pending before it in accordance with law, uninfluenced by any observations or statements made in this judgment and order.

6. As no counter affidavit has been called for or relied upon, the averments made in the writ petition are deemed not admitted and shall not, therefore, prejudice the respondents in any manner.

M.H.S.ANSARI, J

V.ESHWARAIAH, J

Note: CC on priority basis.

To

1 The Assistant Commissioner of Income Tax Circle-6(1),

Buddha Bhavan, M.G.Road Secunderabad.

2 The Tax Recovery Officer-6 Income Tax Department, 6th

Floor, Budha Bhavan, M.G.Road, Secunderabad.

3 The Commissioner of Income Tax AP-3,

Basheerbagh,Hyderabad.

4. Two C.D. copies.